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EXHIBIT 25

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RECEIVED

TO: Joseph Laydon, Town Planner
CC: Tim McInerney, Town Administrator
FR: Ginny Kremer, Town Counsel
DA: April 19, 2019
RE: Zoning Review for Library Expansion

MAY 16 2019

PLANNING BOARD
GRAFTON, MA

The Grafton Public Library is a preexisting nonconforming structure located at 35 Grafton Common. The Town is currently undertaking a substantial expansion and renovation of the building. You have requested our written opinion as to the zoning process we recommend. For the reasons set forth below, we recommend that the proposed expansion be subject to Site Plan Review by the Planning Board.

Under the Zoning By Law ("ZBL"), the Library's use category is "Other Institutional and Philanthropic Uses," which requires a special permit for authorization in every zoning district. Although the Library is a preexisting nonconforming structure, the proposed substantial modification would normally require the issuance of a special permit under G.L. c. 40A and the ZBL § 3.4.3.5. Additionally, to the extent that the extension/structural change deviates from the any requirement of the ZBL, such deviations would normally require a variance from the Zoning Board of Appeals. Rockwood v. The Snow Inn Corp., 409 Mass. 361, 364 (1991). However, the library, which is clearly an educational use,¹ is protected by the so-called Dover Amendment, G.L. c. 40A, § 3. That statute states that local zoning by laws cannot "prohibit, regulate, or restrict the use of land or structures" for educational purposes. As construed by the courts, this means that the Town need not apply for a variance from local regulations. Tufts College v. City of Medford, 415 Mass. 753 (1993). Additionally, the ZBL's dimensional and other requirements (e.g., parking) may not be applied if compliance would substantially diminish or detract from the usefulness of the proposed structure without appreciably advancing legitimate zoning concerns. Id. At 759-60. While Site Plan Review cannot be required, my recommendation is for the Town to voluntarily agree to such review, and to the extent there are questions regarding applicability of any ZBL requirements, those can be addressed during that process.

If you have any questions or wish to discuss this further, please let me know.

¹ Probably because there is no credible argument to be made that a library is not an educational use, there does not appear to be a case specifically so stating. However, "educational use" has always been very broadly defined as constituting "the process of developing and training the powers and capabilities of human beings" and preparing people for "activity and usefulness in life," Worcester v. Worcester Dynamic, 11 Mass. App. Court 97, 99 (1980), which clearly includes a library use.